Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Consumer and Governmental Affairs Bureau	)	CG Docket No. 18-152
Seeks Comment on Interpretation of the Telephone	)	
Consumer Protection Act in Light of the D.C.	)	
Circuit's ACA International Decision	)	
	)	
Rules and Regulations Implementing the	)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991	)	

Reply Comments of ADT LLC d/b/a ADT SECURITY SERVICES

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Executive Summary

In its initial comments, ADT described its extensive compliance efforts and noted that it nevertheless found itself in litigation due to the overly broad interpretations of the TCPA in prior Commission orders.[1] There is now a broad consensus among key stake holders on revising those interpretations. Automatic telephone dialing systems ("ATDS") should be defined as equipment that has the present capability both to generate random or sequential numbers and to dial those numbers without human intervention. Only when those essential functions of an ATDS are used to make the call should the restrictions in Section 227(b)(1) of the TCPA arise. This interpretation is most faithful to the statutory language and Congress's intent.

As reflected in the numerous comments submitted in response to the *Public Notice,* there is also agreement that the term "called party" should be defined as the intended recipient and that the Commission should retain its reasonable reliance approach to prior consent. Under that approach callers may reasonably rely on the prior consent of the person that provided the number called absent actual knowledge of reassignment. The record also supports establishing a safe harbor for companies utilizing existing compliance solutions, and to adopt a safe harbor for those that use a comprehensive reassigned number database should one be established.

There is also a broad consensus that the Commission should identity a set of reasonable, easy-to-use methods of revocation that will help ensure both consumers and businesses that a request for revocation will be received and honored. Numerous commenters propose common-sense methods of revocation, such as dedicated email addresses, toll-free numbers, website links or traditional mail.

[1] Comments of ADT LLC d/b/a ADT Security Services, CG Docket No. 18-152, CG Docket No. 02-278, at 2-8 (filed June 13, 2018)(*ADT Comments*).

Consumer groups, plaintiff's lawyers, and a substantial number of individual consumers participating in what appears to be an assembly line-style write-in campaign, continue to express concerns that such TCPA revisions will open the flood gates to more "robocalls." These concerns are misplaced. The increase in complaints and "robocalling"cited by consumers occurred notwithstanding the broad interpretations of the TCPA stemming from the *2015 TCPA Order* and other Commission orders.[2] The unfortunate fact is that unscrupulous actors will engage in mass robocalling campaigns without regard to the rules, however they are written. Reestablishing the same overly broad interpretations that so troubled the D.C. Circuit will not deter these bad actors, but they will continue to chill legitimate communications between businesses and their customers.[3]

Finally, the Commission should take this opportunity to use its delegated authority to update the TCPA to reflect the predominant way consumers communicate today. A number of commenters noted the dramatic changes since adoption of the TCPA in 1991, particularly the prevalence of wireless only households. Despite the fact that wireless service is largely replacing residential landlines, the Commission's rules still treat the two differently with respect informational calls. Such calls may be made to residential landlines using autodialer technology without prior consent, but when the same call is made to a cell phone, consent is required. The

[2] Comments of the National Consumer Law Center, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (stating "robocalls" increased 285% over the past three years) (filed June 13, 2018)(*NCLC Comments*).

[3] NCLC claims that class action lawsuits are necessary because the statutory damages of $500, or $1500 for willful violations, are insufficient to motivate consumers to seek relief. NCLC Comments at 12. Ironically, as some commenters point out, consumers in TCPA class actions recover on average only between $4.12 and $9.53, while attorneys collect on average $2.4 million. Comments of the Electronic Transactions Association CG Docket No. 02-278, CG Docket No. 18-152, at 2 (filed June 13, 2018)(*ETA Comments*); Comments of U.S. Chamber Institute for Legal Reform, CG Docket No. 02-278, CG Docket No. 18-152, at 10 (filed June 13, 2018) (*Chamber of Commerce Comments*). Clearly consumers would be much better off financially if they filed *pro se* actions in small claims court, as Congress believed would be the case. *See Statement of Sen. Hollings,* 137 Cong. Rec 30821-30822, (1991).

Commission should provide the same exemption for non-telemarketing calls to cell phones that it has established for residential lines.

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ADT LLC d/b/a ADT Security Services ("ADT"), by and through its counsel, submits these reply comments in response to the *Public Notice*.[4] Rarely have comments reflected such a high level of unanimity among key stakeholders on a set of critical and controversial issues. There is broad consensus regarding the precise contours of a definition of an automated telephone dialing system ("ATDS"), on the appropriate interpretation of the term "called party," and on the need to identify a set of reasonable methods to revoke consent and what those methods should entail. Given the continuing uncertainty in the aftermath of the D.C. Circuit's opinion in *ACA International v. FCC*, ADT respectfully urges the Federal Communications Commission ("Commission") to act quickly and decisively in revising and clarifying its prior interpretations of the Telephone Consumer Protection Act ("TCPA").

[4] Consumer and Governmental Affairs Bureau Seeks Comment on Interpretation of the Telephone Consumer Protection Act in Light of the D.C. Circuit's ACA International Decision, CG Docket Nos. 18-152, 02-278 (rel. May 14, 2018) (*Public Notice*).

I. Consumer Groups and Plaintiffs' Firms Misinterpret the ATDS Definition By Reading the Requirement of Random or Sequential Number Generation Out of the Statute.

A. An ATDS Must Generate Numbers Randomly or Sequentially

Consumer groups and plaintiffs' firms wrongly argue that the statutory definition of an ATDS contemplates inclusion of any equipment capable of storing numbers and then dialing them.[5] In support of this argument, they point to the use of the disjunctive "or" in the ATDS definition – "to store or produce telephone numbers to be called, using a random or sequential number generator" – and, relying on the doctrine of the last antecedent, argue that the random or sequential number generator clause can only modify the term "produce."[6] That doctrine does not apply in this instance because the "use of a comma to set off a modifying phrase from other clauses indicates that the qualifying language is to be applied to all previous phrases and not merely the immediately preceding phrase."[7] Under their interpretation, they would thus rewrite the ATDS definition to include equipment that stores numbers and then dials them. In this way, they hope to retain coverage of predictive dialers or equipment that dials numbers from stored lists.

NCLC's and plaintiffs' counsels' argument also impermissibly reads out of the ATDS definition the concept of indiscriminately calling numbers generated randomly or sequentially, which was the key concern motivating this section of the TCPA. Congress was not primarily concerned with the privacy implications of the automatic functioning of the ATDS equipment.

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[5] Comment of Law Offices of Todd M. Freiman, P.C., Kazerouni Law Group, APC, and Hyde & Swigart, APC, CG Docket No. 18-152, at 6 (filed June 13, 2018) (*Jason Ibey comments*); NCLC Comments at 16; Comments of John Herrick, CG Docket No. 02-278, CG Docket No. 18-152, at 12 (filed June 13, 2018) (*Herrick/Bock Comments*).

[6] NCLC Comments at 16-17; Comments of Justin T. Holcombe, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018) (*Holcombe Comments*); Herrick/Bock Comments at 13.

[7] *See, e.g., Elliot Coal Mining Co. v. Dir., Office of Worker' Compensation Programs*, 17 F.3d 616, 630 (3d Cir. 1994); see also *Yang v. Majestic Blue Fisheries, LLC*, 876 F.3d 996, 1000 (9th Cir. 2017) ("[B]oth we and our sister circuits have recognized . . . [that] a qualifying phrase is supposed to apply to all antecedents instead of only the immediately preceding one where the phrase is separated from the antecedents by a comma.") (citations omitted).

This can be readily discerned by the fact that Congress did not bar the use of ATDS to reach residential lines, which at the time was the overwhelming telephony medium.[8] When the TCPA was enacted, more than 93 percent of households had a landline phone, while the percentage of consumers with wireless phones was de minimis, and zero percent of Americans had cut the wireline cord and used only a wireless phone.[9] If Congress were primarily concerned with the privacy implications of autodialer technology, it would have barred its use in calling the type of phone lines everyone had at the time – residential landlines.

Instead, as a number of comments point out, Congress was concerned that calling random numbers or large sequential blocks of numbers, *e.g.*, all numbers ranging from XXX-0000 to XXX-9999, without making any effort to ascertain who was being called or on what type of telephone line created risks to public safety and health.[10] Calls were being placed to emergency lines or hospital rooms or to all of the lines of a single business, precluding their use for important communications.[11] This concern is reflected in the structure of Section 227(b)(1)(A), which precludes use of an ATDS without prior consent for three discrete categories: (i) "to any emergency telephone line;" (ii) "to the telephone line of any guest room or patient room of a

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[8] See 47 U.S.C. § 227(b)(1)(B) (barring calls to residential lines "using an artificial or prerecorded voice" but not using an ATDS).

[9] *See, e.g.*, FCC Releases Semiannual Study of Telephone Trends, Press Release, Aug. 7, 1991 (reporting that 93.6% of households had telephone service, which at the time reflected landline usage). In 1991, when the TCPA was enacted, roughly 3 people out of a hundred had a cell phone and these were primarily professionals using their phones for business purposes. *See Mobile Cellular Subscriptions in the U.S.* available at https://fred.stlouisfed.org/series/ITCELSETSP2USA, (last visited June 25, 2018). The Commission did not begin reporting cellular phone usage until 1992, when it reported data compiled by the then-Cellular Telecommunications Industry Association showing some 7.5 million wireless subscribers in December 1991. *See* Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, 10 FCC Rcd. 8844, 8873, Table 1 (1995) (*First CRMS Competition Report*).

[10] *See, e.g.*, Comments of the Retail Industry Leaders Association, CG Docket No. 02-278, CG Docket No. 18-152, at 9-10 (filed June 13, 2018) (*RILA Comments*); Comments of Consumer Bankers Association, CG Docket No. 18-152, at 3 (filed June 13, 2018), Comments of TechFreedom, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018) (*TechFreedom Comments*); Comments of Tatango, Inc. In Response to the Consumer and Governmental Affairs Bureau's Public Notice, CG Docket No. 02-278, CG Docket No. 18-152, at 5 (filed June 13, 2018); Comments of Noble Systems Corporation, CG Docket No. 02-278, CG Docket No. 18-152, at 5-7 (filed June 13, 2018) (*Noble Comments*); Comments of Sirius XM Radio Inc., CG Docket No. 02-278, CG Docket No. 18-152, at 6-8 (filed June 13, 2018)(*Sirius XM Comments*).

[11] *See, e.g.*, RILA Comments at 9; Sirius XM Comments at 7-8; TechFreedom Comments at 2-3.

hospital, health care facility, elderly home, or similar establishment;" or (iii) "to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call." As explained in ADT's initial comments, the last provision reflects the concern that users of these wireless services incurred additional costs for incoming calls, causing a direct economic impact not incurred by residential landline telephone users receiving telemarketing calls.[12] There is no indication Congress was concerned with the use of autodialing technology to call specified lists of numbers.[13] Calling predefined lists would typically not result in the harms motivating Congress as such lists would be unlikely to include numbers with little or no possibility of successful marketing.

A definition that applies the random or sequential number generator clause to the whole of Section 227(b)(1)(A) does not render the term "store" superfluous even if, as is argued, such a generator cannot be used to store numbers. The ATDS definition refers to a system and it is completely reasonable to read the definition as applying to equipment that has the capacity to store the numbers that were produced by a random or sequential number generator before those numbers are dialed, even if the storage lasts for matter of seconds or milliseconds, or stores randomly or sequentially generated numbers for calling at another time. Conversely, defining an

[12] ADT Comments at 26.

[13] *See, e.g.*, Noble Comments at 7 (banning autodialers using random or sequential number generators was "carefully tailored to address" the problem of indiscriminate dialing); TechFreedom Comments at 3. Legislative history clearly shows that lawmakers were aware of the distinction between random and sequential dialing on the one hand, and dialing from a set list of specific telephone numbers on the other. For instance, one witness testified at a hearing on the precursor bill to the TCPA: "There is . . . a sharp technological distinction between 'random' or 'sequential' number generation and 'programmable' number generation. . . . Programmable equipment enables a business to transmit a standard . . . message quickly to a number of telephone subscribers . . . with whom the sender has a prior business relationship." *Telemarketing Practices: Hearing Before the House Subcommittee on Telecommunications and Finance*, 40-41, 101 Con. (1989) (statement of Richard A. Barton). Law Professor Robert L. Ellis commented on the same bill: "The definition of 'automatic telephone dialing system' . . . is quite limited: it only includes systems which dial numbers sequentially or at random. That definition does not include newer equipment which is capable of dialing numbers gleaned from a database." *Id*., at 71-72 (statement of Robert L. Ellis).

ATDS as any equipment capable of storing and then dialing numbers would result in exactly the type of "eye-popping" overbreadth that the D.C. Circuit just struck down. Virtually any device with memory can store numbers. The Commission long ago ruled that the ability to store and dial numbers, for example, call forwarding or speed dialing functions, is insufficient to qualify as an ATDS.[14]

NCLC further argues that limiting ATDS to equipment that calls randomly or sequentially generated numbers would be nonsensical because calls to cell phones require prior consent, which could never occur if numbers were generated out of "thin air."[15] But that actually was the point. In order to stop calling numbers out of "thin air," in other words calling numbers indiscriminately using an autodialer, Congress required prior consent. The hoped-for effect was to stop calling numbers generated out of "thin air." Rather than render the statute nonsensical, the ban on indiscriminate calling by requiring prior consent fulfills the statutory purpose.

Moreover, NCLC's statement that random or sequential number generators pull numbers out of "thin air" is not quite accurate. A sequential or random number generator does not just generate numbers of out of "thin air." It could be programmed, as noted above, to dial every number in a ten thousand block sequence (the way numbers were traditionally assigned to carriers that in turn assigned them to their subscribers). Those numbers are not generated out of thin air, but calling all numbers in a ten thousand block, for example, creates the concern animating Congress, such as tying up all of the lines of a business which could have received hundreds or thousands of numbers in a sequence. NCLC's suggestion that barring use of random

[14] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CC Docket No. 92-90, Report and Order, 7 FCC Rcd. 8752, 8776 ¶47 (1992) ("*1992 TCPA Order*")("The prohibitions of [Section] 227(b)(1) clearly do not apply to functions like 'speed dialing,' 'call forwarding,' or public telephone delayed message services (PIMS), because the numbers called are not generated in a random or sequential fashion.").

[15] NCLC Comments at 18-19. NCLC focuses just on calls to cell phones in 227(b)(1)(A)(iii), but the prior consent obligation of course applies to emergency telephone lines and lines to hospital rooms and similar facilities in subsection (i) and (ii) as well. Congress was likely much more concerned about the impact of indiscriminate calling on those lines than the very nascent wireless market.

or sequential number generators would not address the problem of overwhelming the telephone lines of a business thus reflects a fundamental misunderstanding of the systems and numbering schemes involved.[16]

Consumer groups' policy concerns are also misdirected. They claim that an overly "narrow" definition of ATDS will leave consumers with no way to stop the "flood of calls."[17] This is just not true, at least for companies that make good faith efforts to comply. Consumers can simply ask for the calls to stop (and/or can register their telephone numbers, whether cell or landline, on the National Do Not Call Registry and, if applicable, their state Do Not Call Registry, which were designed for that very purpose). When such requests are made of telemarketers, for example, the rules require that internal do not call lists reflect that request – a rule unaffected by the ATDS definition. Moreover, marketing best practices require companies to disclose and honor a set of stop commands.[18] Companies exercising prudent calling practices will stop making calls after being asked, as long as the request is reasonably conveyed.

B. Consumer Groups Would Reinstate the Same Overly Broad Interpretation of Capacity that the D.C. Circuit Struck Down

NCLC asks the Commission to reinstate the broad interpretation of capacity that the D.C. Circuit just reversed. Its sole concession is to suggest that the Commission expressly carve out smart phones.[19] It is noteworthy that the NCLC acknowledges that the prefatory language in Section 227(b)(2), which directs the Commission "to implement the requirements" of this subsection, confers broad authority on the agency to adopt exemptions that extend beyond the

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[16] NCLC Comments at 16-17.
[17] NCLC Comments at 16; Comments of the Consumers Union, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018)(*CU Comments*).
[18] Mobile Marketing Association, U.S. Consumer Best Practices for Messaging, at 43 available at http://www.mmaglobal.com/files/Best_Practices_for_Messaging_Version_7.0%5B1%5D.pdf (last visited June 28, 2018).
[19] NCLC Comments at 20-21.

specific delegations of authority listed in subsection (b)(2).[20] NCLC urges the Commission to use this authority to exclude from the autodialer definition equipment not ordinarily used to make large numbers of calls in a short period of time. It does not propose to further define what constitutes large numbers or a short period of time. This approach thus suffers from the same uncertainty that led the D.C. Circuit to strike as arbitrary and capricious the Commission's previous efforts to define an ATDS. With no guidance on what constitutes too many calls within a set period of time, responsible businesses are left once again guessing at what equipment qualifies as ATDS.

At any rate, the solution to addressing ambiguity around "capacity" can be resolved by requiring that the requisite functionality actually be used in making the calls at issue. Numerous commenters propose this approach.[21] NCLC claims, somewhat nonsensically, that limiting the TCPA's restrictions on autodialer calls to those made using autodialer functionality is somehow contrary to the statute.[22] The statue, however, is best read to require use of autodialer functions to trigger the prohibition. The calling restrictions in Section 227(b)(1)(A) of the TCPA apply to calls "using any [ATDS]." It is therefore necessary to define what constitutes an ATDS, which the statute does, and that definition informs the scope of the prohibited practice.

[20] NCLC Comments at 22 (quoting Section 227(b)(2) ("The Commission shall prescribe regulations to implement the requirements of this subsection.")). Subsection (b)(2) confers authority to exempt certain types of calls from the prior consent requirement, such as calls not charged to the end user, (b)(2)(C), or informational calls to residential lines (b)(2)(B). NCLC has previously argued that the Commission may not adopt any exemptions beyond those specifically identified in (b)(2). *See* Comments Opposing the Credit Union National Association Petition for Declaratory Ruling, National Consumer Law Center, *et al.*, CG Docket No. 02-278 at 10-11 (filed Nov. 6, 2017).
[21] *See, e.g.*, Chamber of Commerce Comments at 10; Comments of Professional Association for Customer Engagement, CG Docket No. 02-278, CG Docket No. 18-152, at 9 (filed June 13, 2018) (*PACE Comments*).; Comments of TCN Inc., CG Docket No. 18-152, CG Docket No. 02-278, at 3-4 (filed June 13, 2018).
[22] NCLC Comments at 28.

II. There Is A Strong Consensus On How to Resolve Issues Around Reassigned Numbers and Revocation

Virtually all businesses agree that a permissible, if not better, reading of the statute is that the "called party" should be interpreted as the intended recipient of the call. They also agree that the Commission's reasonable reliance approach to prior consent should be retained and that this approach is best implemented by adopting an actual knowledge standard. A number of commenters also correctly argue that a similar approach should be used when a customer has provided a wrong number.[23] The Commission should promptly adopt these proposals.

A number of commenters, like ADT, state that they utilize existing, commercially available mechanisms to try to identify reassigned numbers, and they propose that the Commission adopt a safe harbor for companies undertaking such efforts.[24] ADT agrees. A safe harbor should also apply to the use of a comprehensive reassigned number database should one be developed. Adoption of a safe harbor has strong support even among those that otherwise have concerns about the creation a comprehensive database.

Opponents of these proposals have no qualms with imposing strict liability for inadvertently reaching a wrong number.[25] Moreover, opponents give no credence to the common-sense notion that businesses have no incentive whatsoever in reaching an unintended recipient. Reaching a wrong or reassigned number wastes resources, staff time, and results in

[23] There is no meaningful distinction between calls or texts to wrong telephone numbers and reassigned numbers under the TCPA. Indeed, courts have treated them the same way under the 2015 Order. *See, e.g.*, *Bush v. Mid Continent Credit Servs., Inc.*, No. CIV-15-112, 2015 WL 5081688, at *3 (W.D. Okla. July 28, 2015) (under the *2015 Order*, "calls placed by companies to 'wrong numbers' or 'reassigned numbers' are actionable"); Comments of CTIA, CG Docket No. 02-278, CG Docket No. 18-152, at 6-7 (filed June 13, 2018)(*CTIA Comments*); RILA Comments at 23.

[24] Comments of Suncoast Credit Union, CG Docket No. 18-152, CG Docket No. 02-278, at 2 (filed June 13, 2018); Chamber of Commerce Comments at 15-20; Comments of Syniverse Technologies, CG Docket No. 18-152, CG Docket No. 02-278, at 2-4 (filed June 13, 2018).

[25] Jason Ibey Comments at 20 ("The plain language of the TCPA contains no safe harbor rule and imposes strict liability for calls that are not deemed to have been 'willful' violations.").

opportunity costs.[26] The sooner a business can learn that the number it is calling is not associated with the intended recipient the better. And virtually all agree with a standard that would impose liability on entities that continue to call a wrong or reassigned number after learning of the mistake.

As to revocation, there is no disagreement that consumers may revoke consent and remarkable consistency in proposing methods by which an intent to revoke may be conveyed. Numerous commenters suggest multiple easy-to-use methods, such as emailing a designated email address, calling a designated toll-free number that utilize a key press, filling out a request on a website or via postal mail.[27] For texts, many note that best practices require companies to honor a recognized string of commands, such as STOP, that systems are programmed to recognize.[28] Companies and their customers may also mutually agree on a method of revocation that cannot be unilaterally altered. ADT agrees with comments proposing a "clear expression" of revocation: request forms; toll-free numbers that utilize a key press; a "STOP" command in a text. These methods are unambiguous, and easy to control and record. Methods that are more free form and do not define express revocation terms; such as, email or telephone calls without uniform revocation terms, may be subject to manipulation by enterprising TCPA claimants and leaves the issue of revocation open to be a disputed issue of fact. Where a company offers use of these "clear expression" mechanisms, which are then used by the consumer, the Commission

[26] Comments of PRA Group, Inc., CG Docket No. 18-152, CG Docket No. 02-278, at 11 (filed June 13, 2018); Comments of the Coalition of Higher Education Assistance Organizations, CG Docket No. 18-152, CG Docket No. 02-278, at 11 (filed June 13, 2018); Tatango Comments at 13.

[27] Comments of Edison Electric Institute and National Rural Electric Cooperative Association, CG Docket No. 02-278, CG Docket No. 18-152, at 12-13 (filed June 13, 2018) (*EEI/NRECA Comments*); Tatango Comments at 13-14; Chamber of Commerce Comments at 20-24; CTIA Comments at 3; RILA Comments at 29-30; Comments of Bellco Credit Union, CG Docket No. 02-278, CG Docket No. 18-152, at 2-3(filed June 12, 2018) (*Bellco Comments*); PACE Comments at 12-14.

[28] *See, e.g.*, Tatango Comments at 13 (citing CTIA, Shortcode Monitoring Handbook at §A.2.04 (2017)); Chamber of Commerce Comments at 22.

should create a presumption of revocation and, conversely, lack of their use should create the reverse presumption.[29]

The National Association of Federally-Insured Credit Unions ("NAFCU") echoes ADT's recommendation that an opt out in one context should not automatically be deemed a revocation of consent for all purposes.[30] NAFCU suggests that the Commission allow a caller to "designate whether an opt-out is only for a particular type of communication or for all communications."[31] The distinction is important. In the context of a collection call, for example, a request to "stop calling" may reasonably be deemed limited to calling about collection activities, which would be consistent with consumer protections under the Federal Debt Collection Practices Act and state collection practices statutes.[32] There may be a number of other reasons, not all of which might qualify as an exempt emergency, why ADT would seek to communicate with a customer that had previously provided consent to call a cell phone number. These could include calling about problems detected with the alarm equipment, scheduling service appointments, customer service follow up calls, and a host of other informational calls the consumer would want to receive. The customer may not have intended to stop receiving such calls when asking to stop collection calls.

III. It's Time to Update the TCPA to Reflect the Changed Communication Landscape

In its initial comments ADT urged the Commission to use its delegated regulatory authority to begin to update the TCPA to reflect the way companies and consumers predominantly communicate today.[33] A significant number of comments note the dramatic

[29] Chamber of Commerce Comments at 21-22; PACE Comments at 14.
[30] ADT Comments at 24.
[31] NAFCU Comments at 3.
[32] See e.g., 15 U.S.C. § 1692 (d).
[33] ADT Comments at 25-29.

changes that have occurred in the communications market since the TCPA was adopted in 1991.[34]

The key change is the decline of residential landlines, particularly the traditional circuit-switched POTs lines, which have been replaced with VoIP or wireless services. The predominance particularly of wireless services is the exact opposite of where communications stood in 1991 when the TCPA was adopted. The Commission believed then, when virtually every call went to a landline phone, that consumer privacy would not be unduly harmed by calls to such lines from companies with which the consumer had an established business relationship ("EBR").[35] This was true even for telemarketing calls and is still true for informational calls. Although the Commission in 2012 eliminated the EBR for telemarketing calls to residential landlines, the Commission's rules still exempt informational calls to residential lines from the requirement of prior consent.[36] Callers, however, must obtain consent to make the same informational calls to cell phones, which the majority of the population now uses as their only telephone service.

Another major change is that the cost of virtually all texts and calls are covered under single-price calling plans used by cell phone subscribers, eliminating the concern that animated

[34] See eg., Comments of Selene Finance LP, CG Docket No. 02-278, CG Docket No. 18-152, at 2 (filed June 13, 2018)(Noting that 53.9% of households now rely solely on cell phones); NCHER Comments at 2-3 (noting that age groups typical of student loan borrowers are quickly abandoning landline, 73.3% of 25 to 29 year olds and 74.4% of 30-34 year holds live in cell phone only households); Tatango Comments at 7; Comments of the Bureau of Consumer Financial Protection, CG Docket No. 18-152, at 1 (filed June 13, 2018) (noting rapid increase of smart phones, texts and other newer methods of communication, which highlighs the importance of reviewing "how statutes and regulations apply to them.") ; Comments of Rushmore Loan Management Services LLC, CG Docket No. 02-278, CG Docket No. 18-152, at 3 (filed June 13, 2018). *See also*, *Broadnet Comments* at 3 (noting those who rely primarily on cell phones, which includes a disproportionate number of disadvantaged citizens, are being deprived of important opportunities to engage with their government.).

[35] 1992 TCPA Order, 7 FCC Rcd. 8752, 8770–71, ¶ 34.

[36] *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 27 FCC Rcd. 1830, 1845–48, ¶¶ 35–43 (2012) ("*2012 TCPA Order*").

Congress when it barred use of ADTS equipment to call cell phones and other wireless services in which the called party incurred a charge for incoming calls.[37]

The Commission should take this opportunity to not only revise and rationalize the definition of key TCPA terms, but also utilize its regulatory authority, which NCLC acknowledges the Commission has, to eliminate the antiquated distinction between residential landlines and cell phones.[38] Informational calls to cell phones should, like residential landlines, not require prior consent. This may be accomplished by creating an EBR for informational cell phone calls or exempting all informational calls to cell phones where called party is not charged for the call, subject to reasonable limitations on call frequency.[39]

Conclusion

ADT respectfully urges the Commission to revise and update the TCPA as described above.

[37] *See, e.g.*, Chamber of Commerce Comments at 22, n. 67; Comments of the National Automobile Dealers Association, CG Docket No. 18-152, at 8 (noting that the Commission's decision to include text messages as calls reflected a concern about costs, but, today, the "vast majority" of cell phone customers no longer buy buckets of minutes or texts against which incoming calls or texts were charged.")(filed June 13, 2018). See also Credit Union National Association Petition for Declaratory Ruling, CG Docket 02-278 at 10 (filed Nov. 21, 2017)(*CUNA Petition*).

[38] As noted, NCLC concurs that the Commission has broad authority to adopt exemptions. NCLC Comments at 22.

[39] *See, e.g.*, Comments of the Ohio Credit Union League, CG Docket No. 02-278, CG Docket No. 18-152 at 7 (filed June 13, 2018); Selene Comments at 3 (stating that calling numbers generated from lists of consumers with whom the caller has a business relationship should be excluded the definition of an ATDS); *See also*, CUNA Petition at 9-11.

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